

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
RAYMOND SHAKE CO., )  
Appellant, )  
vs. )  
OLYMPIC AIR POLLUTION )  
CONTROL AUTHORITY, )  
Respondent. )

PCHB No. 370

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

THIS MATTER the appeal of six alleged smoke emission violations having come on regularly for hearing before the Pollution Control Hearings Board on the 4th day of October 1973 at Lacey, Washington; and appellant, Raymond Shake Co., appearing through an employee, John Karnas, and respondent, Olympic Air Pollution Control Authority, appearing through its attorney, Fred Gentry; and Board members present at the hearing being W. A. Gissberg; and the Board having considered the sworn testimony, exhibits, records and files herein and having entered on the 11th day of December, 1973, its proposed Findings of Fact, Conclusions

1 of Law and Order; and the Board having served said proposed Findings,  
2 Conclusions and Order upon all parties herein by certified mail, return  
3 receipt requested and twenty days having elapsed from said service; and

4 The Board having received exceptions to said proposed Findings,  
5 Conclusions and Order from appellant, reply to these exceptions by  
6 respondent and rebuttal to respondent's reply, and having considered same  
7 and denied appellant's exceptions; and the Board being fully advised in  
8 the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
10 Findings of Fact, Conclusions and Order, dated the 11th day of December,  
11 1973, and incorporated by this reference herein and attached hereto as  
12 Exhibit A, are adopted and hereby entered as the Board's Final Findings  
13 of Fact, Conclusions and Order herein.

14 DONE at Lacey, Washington this 20<sup>th</sup> day of March, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16 Walt Woodward  
17 WALT WOODWARD, Chairman

18 W. A. Gissberg  
19 W. A. GISSBERG, Member

20 Mary Ellen McCaffree  
21 MARY ELLEN McCAFFREE, Member

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26 FINAL FINDINGS OF FACT,  
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An informal hearing on the appeal of Raymond Shake Co. to six Notices of Civil Penalties aggregating the total sum of \$1,000.00 for six separate alleged smoke emission violations came on before W. A. Gissberg, Board member and presiding officer, on October 4, 1973 in Lacey, Washington.

Appellant appeared by and through John Karnas, an employee of appellant; respondent appeared by and through its attorney, Fred Gentry.

Having reviewed the transcript of the testimony and the exhibits admitted into evidence and being fully advised, the Board makes the

EXHIBIT A

1 following

2 FINDINGS OF FACT

3 I.

4 Raymond Shake Co. conducts a mill business and burns waste wood in  
5 its two wigwam burners at two separate mill sites near Raymond, Pacific  
6 County, Washington.

7 II.

8 The smoke plumes emanating from appellant's two burners are  
9 simultaneously visible to an observer. On April 9, 10 and 11, 1973,  
10 respondent's inspectors observed smoke emissions from appellant's two  
11 mill sites which emissions were each in excess of 15 minutes duration in  
12 any consecutive eight hours and which smoke was of a shade darker than  
13 No. 2 on the Ringelmann Chart; namely, a Ringelmann No. 3.

14 III.

15 Section 10.01 of respondent's Regulation 1 governs the emissions from  
16 waste-wood burners and makes it unlawful to cause or allow the emission  
17 to the outdoor atmosphere for more than fifteen minutes in any consecutive  
18 8 hours of a gas stream containing air contaminants which is darker in  
19 shade than that designated as No. 2 on the Ringelmann Smoke Chart.

20 IV.

21 Respondent issued Notices of Violations and Civil Penalties as  
22 follows:

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FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1	<u>Notice of Violation No.</u>	<u>Date of Violation</u>	<u>Civil Penalty Assessed</u>
2	489	April 9, 1973	\$ 100.00
	490	April 9, 1973	100.00
3	524	April 10, 1973	150.00
	525	April 10, 1973	150.00
4	265	April 11, 1973	250.00
	266	April 11, 1973	250.00
5			
6		Total	\$1,000.00

7 The penalties are the subject of this appeal.

8 V.

9 On January 3, 1973, respondent issued Variances for each of  
10 appellant's mills. The stated conditions of each Variance were that  
11 petitioner "shall at the end of the three month period either (1) cease  
12 burning: (2) attain compliance with Regulation 1; or (3) present a  
13 written compliance plan to the Board of Directors of the Olympic Air  
14 Pollution Control Authority . . . ".

15 The Variances were each for a period of three months. Although the  
16 Variances actually expired on April 3, 1973, appellant erroneously  
17 believed them to be effectual until July 3, 1973. Appellant learned of  
18 its error when the Notices of Violations of April 9, 1973 were served upon  
19 it on April 10, 1973. Sometime during the day of April 11, 1973, appellan  
20 filed its application for a compliance schedule with respondent.

21 VI.

22 The two smoke emissions on April 11, 1973 occurred at least fifteen  
23 minutes before 8:00 a.m. Thus, all of the violations which are the  
24 subject of this appeal occurred after the Variance had by its terms  
25 expired and before appellant had filed its compliance schedule with  
26 respondent.

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

VII.

Appellants are now and have been since April 11, 1973 earnestly attempting to achieve compliance with respondent's Regulations and will have incurred a financial impact of \$30,000.00 in so doing.

From which comes these

CONCLUSIONS OF LAW

I.

Appellant was in violation of Section 10.01 of respondent's Regulation 1.

II.

The corporate management of appellant had not at the time of the imposition of the civil penalties seriously regarded its smoke emission problems. This is evidenced by the fact that its management was not aware of the true expiration date of its Variances. It failed or neglected to read what was obvious in its Variances. Only after the imposition of the civil penalties did appellant take the necessary and obvious steps to begin to achieve compliance with respondent's Regulations.

III.

Air pollution is a matter of serious concern to the citizens of this state and one affecting the public health. Sustaining these civil penalties will dramatically bring home that fact to appellant.

From which follows the Board's

ORDER

The appeal is denied and the civil penalties sustained.

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 DONE at Lacey, Washington this 11th day of December, 1973.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward  
4 WALT WOODWARD, Chairman

5 W. A. Gissberg  
6 W. A. GISSBERG, Member

7 Mary Ellen McCaffree  
8 MARY ELLEN McCAFFREE, Member

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